

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Ronald J. Hawkins,	:	
Petitioner	:	2:07-mc-00018
v.	:	Judge Frost
United States of America,	:	Magistrate Judge Abel
Respondent	:	

**REPORT AND RECOMMENDATION**

Petitioner Donald J. Hawkins, a prisoner at FCI-Beckley, brings this petition asking the court to construe 18 U.S.C. § 3742(a). He apparently intends to file a proceeding later challenging his sentence. This matter is before the Magistrate Judge for preliminary consideration under Rule 4, Rules Governing Section 2255 Cases in United States District Courts.

The petition does not allege when Hawkins was convicted, when he was sentenced, whether he appealed that sentence, or even the challenge to the sentence he intends to make. The court cannot construe 18 U.S.C. § 3742(a) in the abstract. If Hawkins has an appeal from a sentence he wants to take, he should file it. Then the court of appeals can rule on the applicability of § 3742(a).

I note that the only criminal case to which Hawkins was a party in the Southern District of Ohio was 2:90-cr-00209-JDH. Since the case was closed in March 1991, it would appear that the time to challenge the sentence imposed has long since passed.

Even if Hawkins were seeking to make a *Blakely v. Washington*, 542 U.S. 296 (2004) or *United States v. Booker*, 543 U.S. 220 (2005) challenge to the sentence, the one year statute of limitations for filing a § 2255 petition has passed. 28 U.S.C. §2244(d)(1). Moreover, *Booker* is not retroactive to sentences that became final before the date of decision in that case. *Language v. United States*, 474 F.3d 348, 351-53 (6th Cir. 2007).

Accordingly, the Magistrate Judge RECOMMENDS that this petition be DISMISSED for failure to state a claim and, in the alternative, for failure to file the petition within the one-year period of limitation created by 28 U.S.C. §2244(d)(1).

If any party objects to this Report and Recommendation, that party may, within ten (10) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1)(B); Rule 72(b), Fed. R. Civ. P.

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *Thomas v. Arn*, 474 U.S. 140, 150-52 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also, Small v. Secretary of Health and Human Services*, 892 F.2d 15, 16 (2d Cir. 1989).

s/Mark R. Abel  
United States Magistrate Judge